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Public Prosecutor v Tran Van San

B

HIGH COURT (TAIPING) — CRIMINAL REVISION NO AB-43–2–04 OF 2019
MOHD RADZI JC
17 SEPTEMBER 2019

C

Criminal Procedure — Revision — Sentence, review of — Sessions court judge mistakenly sentenced accused convicted under s 68(2)(c) of Wildlife Conservation Act 2010 to jail term only although imposition of fine also mandatory — High Court had to exercise revisionary power under s 323 of Criminal Procedure Code to review sentences and impose fines which reflected seriousness of the offences

D

The sessions court found the respondent ('accused') guilty after trial on ten charges of being in unlawful possession of various body parts of protected wild animals listed under the Second Schedule of the Wildlife Conservation Act 2010 ('the WCA'). Three of the charges fell under s 68(1)(b) of the WCA while the remaining seven charges fell under s 68(2)(c) of the same. A conviction under s 68(1)(b) carried a maximum fine of RM100,000 or a jail term of up to three years or to both. In contrast, a person convicted under s 68(2)(c) — where the offence concerned eight particular species of protected wildlife — was liable to be fined between RM100,000 and RM500,000 in addition to a jail term of up to five years. The trial judge sentenced the accused to varying jail terms in respect of the s 68(1)(b) offences. Mistaking the remaining seven charges to be also under the same section of the WCA, the judge sentenced the accused to 24 months' jail on each of those charges. On realising her mistake, the judge requested the High Court to exercise its revisionary powers under s 323 of the Criminal Procedure Code ('the CPC') to review the sentences given in respect of the seven s 68(2)(c) charges.

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Held:

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(1) Since s 68(2)(c) of the WCA mandatorily provided that both the sentence of fine and imprisonment shall be imposed upon conviction, the sentence of imprisonment only that was meted out by the sessions judge for all the seven charges concerned was clearly a mistake that was subject to revision by the High Court under s 323 of the CPC (see para 18).

I

(2) In reviewing the sentences against the accused, this court took into consideration the fact that three of the charges under s 68(2)(c) of the WCA concerned the Panthera Tigris (Tiger) which was listed as 'critically endangered' under the International Union for Conservation of Nature

('IUCN') Red List of Threatened Species whilst the remaining four charges concerned the Neofelis Nebulosa (Clouded Leopard) and Panthera Pardus (Leopard) which were listed as 'vulnerable' in the said IUCN Red List. The court had to send a strong message to the public on the seriousness of the offences with which the accused was charged in keeping with the aims and objectives of Parliament in introducing the Wildlife Conservation Act 2010 (see paras 20–21 & 28).

Obiter:

The court took judicial notice of the fact that the s 68 offences committed by the accused were listed as serious offences under the Second Schedule of the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001, yet the sentences provided under s 68(2)(c) of the WCA did not reflect the gravity of the offences and until they were amended, the court was bound to impose only the sentences that were currently provided after taking into account the applicable principles on sentencing (see paras 24–25).

[Bahasa Malaysia summary

Mahkamah sesyen telah memutuskan bahawa responden ('tertuduh') bersalah selepas perbicaraan bagi sepuluh pertuduhan pemilikan yang salah dari sisi undang-undang pelbagai bahagian badan haiwan liar yang dilindungi yang disenaraikan di bawah Jadual Kedua Akta Pemuliharaan Hidupan Liar 2010 ('Akta'). Tiga daripada pertuduhan tersebut jatuh di bawah s 68(1)(b) Akta manakala tujuh lagi pertuduhan jatuh di bawah s 68(2)(c) Akta yang sama. Satu sabitan di bawah s 68(1)(b) membawa kepada denda maksimum RM100,000 atau penjara sehingga tiga tahun atau kedua-duanya sekali. Sebaliknya, seseorang yang disabitkan di bawah s 68(2)(c) — di mana kesalahan itu melibatkan lapan spesies hidupan liar yang dilindungi — boleh dikenakan denda antara RM100,000 dan RM500,000 sebagai tambahan kepada tempoh penjara sehingga lima tahun. Hakim perbicaraan menjatuhkan hukuman terhadap tertuduh untuk beberapa tempoh penjara tertakluk kepada kesalah s 68(1)(b). Terkhilaf terhadap baki tujuh pertuduhan juga berada di bawah seksyen Akta yang sama, hakim menjatuhkan hukuman terhadap tertuduh penjara 24 bulan bagi setiap pertuduhan. Apabila menyedari kekhilafan beliau, hakim memohon Mahkamah Tinggi untuk menggunapakai kuasa semakannya di bawah s 323 Kanun Tatacara Jenayah ('KTJ') untuk mengkaji semula hukuman yang diberikan bagi tujuh pertuduhan s 68(2)(c).

Diputuskan:

(1) Memandangkan s 68(2)(c) Akta adalah mandatori dengan syarat kedua-dua hukuman denda dan penjara akan dikenakan apabila disabitkan, hukuman penjara hanya yang diputuskan oleh hakim mahkamah sesyen untuk kesemua baki tujuh pertuduhan adalah dengan jelas telah terkhilaf tertakluk kepada semakan oleh Mahkamah Tinggi di

bawah s 323 KTJ (lihat perenggan 18).

(2) Dalam mengkaji semula hukuman terhadap tertuduh, Mahkamah ini mengambil kira fakta bahawa tiga pertuduhan di bawah s 68(2)(c) Akta bagi Panthera Tigris (Harimau) yang disenaraikan sebagai 'terancam secara kritikal' di bawah Kesatuan Antarabangsa untuk Pemuliharaan Alam Sekitar (Senarai Merah Spesies Terancam 'IUCN' manakala baki empat pertuduhan yang berkait dengan Neofelis Nebulosa (Harimau Bintang) dan Panthera Pardus (Harimau Bintang) yang disenaraikan sebagai 'terjejas' dalam Senarai Merah IUCN tersebut. Mahkamah telah menghantar mesej yang kuat kepada orang ramai mengenai keseriusan pertuduhan dan kesalahan tertuduh demi mengikut matlamat dan objektif Parlimen dalam memperkenalkan Akta Pemuliharaan Hidupan Liar 2010 (lihat perenggan 20–21 & 28).

Obiter:

Mahkamah telah mengambilkira notis kehakiman tentang fakta bahawa kesalahan s 68 yang dilakukan oleh tertuduh telah disenaraikan sebagai kesalahan yang serius di bawah Jadual Kedua Akta Pencegahan Pengubahan Wang Haram, Pencegahan Pembiayaan Keganasan dan Hasil daripada Aktiviti Haram 2001, namun pernyataan yang diperuntukkan di bawah s 68(2)(c) Akta tidak mencerminkan graviti kesalahan dan sehingga mereka dipinda, Mahkamah terikat hanya untuk mengenakan hukuman yang diberikan pada masa ini selepas mengambil kira prinsip yang dikenakan mengenai hukuman (lihat perenggan 24–25).

Cases referred to

Emperor v Nasrullah & Ors [1928] AIR All 287 (refd)
Liaw Kwai Wah v PP [1987] 2 MLJ 69; [1987] CLJ Rep 163, SC (refd)
Manokaran & Anor v PP [1979] 1 MLJ 262; [1978] 1 LNS 118 (refd)
PP v Nguyen Thi Huong [2014] MLJU 1917; [2015] 2 CLJ 102, HC (refd)
Ramanathan Chettiyar v Subrahmanya Ayyar ILR 47 Mad 722 (refd)
Tan Sri Eric Chia Eng Hock v PP (No 1) [2007] 2 MLJ 101; [2007] 1 CLJ 565, FC (refd)

Legislation referred to

Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 Second Schedule
Courts of Judicature Act 1964 ss 31, 35, 36, 37
Criminal Procedure Code s 323, Chapter XXXI
Dangerous Drugs Act 1952 ss 39A, 39C
Penal Code ss 312, 313
Protection of Wild Life Act 1972 (repealed by the Wildlife Conservation Act 2010)
Wildlife Conservation Act 2010 ss 60(1)(b) 65, 68, 68(1), (1)(b), (2) (2)(c), 71

Ainna Ridzwan (Muniara binti Zainal Abidin with her) (Deputy Public Prosecutor, Attorney General's Chambers, Perak) for the appellant.
Ahmad Syamil Azad (Akram Hizri Azad & Azmir) for the respondent.

Mohd Radzi JC:

BACKGROUND

[1] This is a criminal revision pursuant to s 323 of the Criminal Procedure Code at the request of the learned sessions court judge ('SCJ') vide her letter to this court dated 16 April 2019.

[2] Tran Van Sang, a Vietnamese national ('the accused'), was charged before the Kuala Kangsar Sessions Court for four cases involving ten charges under the Wildlife Conservation Act 2010 (Act 716) briefly described as follows:

No Kes: AG-62ES-1–03 of 2018 — three charges under s 68(1)(b) of Act 716 ('Case 1');

No Kes: AG-62ES-2–03 of 2018 — three charges under s 68(2)(c) of Act 716 ('Case 2');

No Kes: AG-62ES-3–03 of 2018 — three charges under s 68(2)(c)of Act 716 ('Case 3');

No Kes: AG-62ES-4–03 of 2018 — one charge under s 68(2)(c) of Act 716 ('Case 4').

[3] The learned SCJ requested for this court to review her order of sentences against the accused for cases 2, 3 and 4 as soon as she realised that the said orders were not in compliance with the statutory provision. Case 1 is therefore not the subject of this review.

[4] At the conclusion of the hearing of this review application, I allowed the application, and directed that the sentences against the accused for cases 2, 3 and 4 as ordered by the SCJ to be altered as enumerated in para 28 below, and highlighted my main reasons for the same. The public prosecutor was aggrieved by my decision and filed this appeal. I set out below the full reasons for the decision.

THE CHARGES

[5] The accused claimed trial for all ten charges preferred against him as below:

No Kes: AG-62ES-01–03 of 2018 ('Case 1')

First Charge:

Bahawa kamu pada 26 Ogos 2017 jam lebih kurang 2.00 pagi di alamat Penempatan Orang Asli Koordinat Legap (X: 3676061, Y: 546718), dalam daerah Sungai Siput dalam negeri Perak di dalam kenderaan jenis Mitsubishi Triton, no Pendaftaran JNK 7468 warna silver telah didapati menyimpan satu (1) unit tanduk Rusa Sambar (Cervus Unicolor) tanpa lesen yang sah iaitu sejenis hidupan liar yang dilindungi di bawah Jadual Pertama Akta Pemuliharaan Hidupan Liar 2010 (AKTA 716): dan oleh itu kamu telah melakukan suatu kesalahan di bawah s 60(1)(b) yang boleh dihukum di bawah seksyen dan akta yang sama.

Second Charge:

Bahawa kamu pada 26 Ogos 2017 jam lebih kurang 2.00 pagi di alamat Penempatan Orang Asli Koordinat Legap (X: 3676061, Y: 546718), dalam daerah Sungai Siput dalam negeri Perak di dalam kenderaan jenis Mitsubishi Triton, no Pendaftaran JNK 7468 warna silver telah didapati menyimpan dua puluh (20) unit taring Beruang Matahari (Helarctos Malayanus) tanpa permit khas iaitu sejenis hidupan liar yang dilindungi di bawah Jadual Kedua Akta Pemuliharaan Hidupan Liar 2010 (AKTA 716); dan oleh itu kamu telah melakukan suatu kesalahan di bawah s 68(1)(b) yang boleh dihukum di bawah seksyen dan akta yang sama.

Third Charge:

Bahawa kamu pada 26 Ogos 2017 jam lebih kurang 2.00 pagi di alamat Penempatan Orang Asli Koordinat Legap (X: 3676061, Y: 546718), dalam daerah Sungai Siput dalam negeri Perak di dalam kenderaan jenis Mitsubishi Triton, no Pendaftaran JNK 7468 warna silver telah didapati menyimpan seratus lapan puluh lapan (188) unit kuku Beruang Matahari (Helarctos Malayanus) tanpa permit khas iaitu sejenis hidupan liar yang dilindungi di bawah Jadual Kedua Akta Pemuliharaan Hidupan Liar 2010 (AKTA 716); dan oleh itu kamu telah melakukan suatu kesalahan di bawah s 68(1)(b) yang boleh dihukum di bawah seksyen dan akta yang sama.

No Kes: AG-62ES-2–03 of 2018) ('Case 2')

First Charge:

Bahawa kamu pada 26 Ogos 2017 jam lebih kurang 2.00 pagi di alamat Penempatan Orang Asli Koordinat Legap (X: 3676061, Y: 546718), dalam daerah Sungai Siput dalam Negeri Perak di dalam kenderaan jenis Mitsubishi Triton, no Pendaftaran JNK 7468 warna silver telah didapati menyimpan lapan (8) unit gigi Harimau Belang (Panthera Tigris) tanpa permit khas iaitu sejenis hidupan liar yang dilindungi di bawah Jadual Kedua Akta Pemuliharaan Hidupan Liar 2010 (AKTA 716); dan oleh itu kamu telah melakukan suatu kesalahan di bawah s 68(2)(c) yang boleh dihukum di bawah seksyen dan akta yang sama.

Second Charge:

Bahawa CA7003844585 kamu pada 26 Ogos 2017 jam lebih kurang 2.00 pagi di alamat Penempatan Orang Asli Koordinat Legap (X: 3676061, Y: 546718), dalam daerah Sungai Siput dalam negeri Perak di dalam kenderaan jenis Mitsubishi Triton, no Pendaftaran JNK 7468 warna silver telah didapati menyimpan lapan belas (18) kuku Harimau Belang (Panthera Tigris) tanpa permit khas iaitu sejenis hidupan liar yang dilindungi di bawah Jadual Kedua Akta Pemuliharaan Hidupan

Liar 2010 (AKTA 716); dan oleh itu kamu telah melakukan suatu kesalahan di bawah s 68(2)(c) yang boleh dihukum di bawah seksyen dan akta yang sama.'

Third Charge:

Bahawa kamu pada 26 Ogos 2017 jam lebih kurang 2.00 pagi di alamat Penempatan Orang Asli Koordinat Legap (X: 3676061, Y: 546718), dalam daerah Sungai Siput dalam negeri Perak di dalam kenderaan jenis Mitsubishi Triton, no Pendaftaran JNK 7468 warna silver telah didapati menyimpan dua (2) bahagian hidupan liar Harimau Belang (Panthera Tigris) tanpa permit khas iaitu sejenis hidupan liar yang dilindungi di bawah Jadual Kedua Akta Pemuliharaan Hidupan Liar 2010 (AKTA 716); dan oleh itu kamu telah melakukan suatu kesalahan di bawah *s 68(2)(c) yang boleh dihukum di bawah seksyen dan akta yang sama.*

No Kes: AG-62ES-3–03 of 2018 ('Case 3')

First Charge:

Bahawa kamu pada 26 Ogos 2017 jam lebih kurang 2.00 pagi di alamat Penempatan Orang Asli Koordinat Legap (X: 3676061, Y: 546718), dalam daerah Sungai Siput dalam negeri Perak di dalam kenderaan jenis Mitsubishi Triton, no Pendaftaran JNK 7468 warna silver telah didapati menyimpan tiga (3) bahagian hidupan liar Harimau Dahan (Neofelis Nebulosa) tanpa permit khas iaitu sejenis hidupan liar yang dilindungi di bawah Jadual Kedua Akta Pemuliharaan Hidupan Liar 2010 (AKTA 716); dan oleh itu kamu telah melakukan suatu kesalahan di bawah s 68(2)(c) yang boleh dihukum di bawah seksyen dan akta yang sama.

Second Charge:

Bahawa kamu pada 26 Ogos 2017 jam lebih kurang 2.00 pagi di alamat Penempatan Orang Asli Koordinat Legap (X: 3676061, Y: 546718), dalam daerah Sungai Siput dalam negeri Perak di dalam kenderaan jenis Mitsubishi Triton, no Pendaftaran JNK 7468 warna silver telah didapati menyimpan dua (2) gigi Harimau Dahan (Neofelis Nebulosa) tanpa permit khas iaitu sejenis hidupan liar yang dilindungi di bawah Jadual Kedua Akta Pemuliharaan Hidupan Liar 2010 (AKTA 716); dan oleh itu kamu telah melakukan suatu kesalahan di bawah s 68(2)(c) yang boleh dihukum di bawah seksyen dan akta yang sama.

Third Charge:

Bahawa kamu pada 26 Ogos 2017 jam lebih kurang 2.00 pagi di alamat Penempatan Orang Asli Koordinat Legap (X: 3676061, Y: 546718), dalam daerah Sungai Siput dalam negeri Perak di dalam Kenderaan jenis Mitsubishi Triton, no Pendaftaran JNK 7468 warna silver telah didapati menyimpan empat belas (14) kuku Harimau Dahan (Neofelis Nebulosa) tanpa permit khas iaitu sejenis hidupan liar yang dilindungi di bawah Jadual Kedua Akta Pemuliharaan Hidupan Liar 2010 (AKTA 716); dan oleh itu kamu telah melakukan suatu kesalahan di bawah s 68(2)(c) yang boleh dihukum di bawah seksyen dan akta yang sama.

No Kes: AG-62ES-4–03 of 2018 ('Case 4')

First Charge:

Bahawa kamu pada 26 Ogos 2017 jam lebih kurang 2.00 pagi di alamat Penempatan Orang Asli Koordinat Legap (X: 3676061, Y: 546718), dalam daerah Sungai Siput dalam negeri Perak di dalam kenderaan jenis Mitsubishi Triton, no

Pendaftaran JNK 7468 warna silver telah didapati menyimpan lima (5) gigi Harimau Kumbang (Panthera Pardus) tanpa permit khas iaitu sejenis hidupan liar yang dilindungi di bawah Jadual Kedua Akta Pemuliharaan Hidupan Liar 2010 (AKTA 716); dan oleh itu kamu telah melakukan suatu kesalahan di bawah s 68(2)(c) yang boleh dihukum di bawah seksyen dan akta yang sama.

THE ORDERS OF THE SCJ

[6] At the end of the defence's case, the learned SCJ convicted the accused for all the ten charges and meted out the following sentences:

Case 1:

First Charge: Eight months imprisonment from the date of arrest (26 August 2017)

Second Charge: 24 months imprisonment from the date of arrest

Third Charge: 30 months imprisonment from the date of arrest

Case 2:

First Charge: 24 months imprisonment from the date of arrest

Second Charge: 24 months imprisonment from the date of arrest

Third Charge: 24 months imprisonment from the date of arrest

Case 3:

First Charge: 24 months imprisonment from the date of arrest

Second Charge: 24 months imprisonment from the date of arrest

Third Charge: 24 months imprisonment from the date of arrest

Case 4:

First Charge: 24 months imprisonment from the date of arrest

THE REVISION

[7] The SCJ had informed this court that when she meted out the sentences, she was under the wrong impression that the charges against the accused for cases 2, 3 and 4 were the same with the charges for case 1, namely for offences under s 68(1)(b) of Act 716, when in actual fact the charges for cases 2, 3 and 4 were for offences under s 68(2)(c) of that Act. Upon the pronouncement of the sentences for all the charges, and as she had functus officio by the time she realised her mistake, she wrote to this court to review her orders for the sentences against the accused for cases 2, 3 and 4.

[8] The sentences provided under paras 68(1)(b) and (2)(c) of Act 716 are

as follows:

> 68(1) Subject to subsection (2), any person who —
>
> (a) ... ; or
>
> (b) takes or keeps any part or derivative of a totally protected wildlife,
>
> without a special permit commits an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit *or*to imprisonment for a term not exceeding three years or to both. (Emphasis added.)
>
> (2) Any person who commits an offence under subsection (1) and which offence involves —
>
> (a) ... ;
>
> (b) ... ; or
>
> (c) Serow (Capricornis sumatrensis), Gaur (Bos gaurus), Javan Rhinoceros (Rhinoceros sondaicus), Sumatran Rhinoceros (Dicerorhinus sumatrensis), Tiger (Panthera tigris), Leopard (Panthera pardus), Clouded Leopard (Neofelis nebulosa) or False Gharial (Tomistoma schlegelii) shall, on conviction, be punished with a fine of not less than one hundred thousand ringgit and not more than five hundred thousand ringgit *and* with imprisonment for a term not exceeding five years. (Emphasis added.)

FINDING

[9] The basis of the revision powers of the High Court are set out in Chapter XXXI of the CPC and ss 31 and 35–37 of the Courts of Judicature Act 1964.

[10] Abdoolcader J (as he then was) in *Manokaran & Anor v Public Prosecutor* [1979] 1 MLJ 262; [1978] 1 LNS 118, ruled that the High Court has not only extensive powers of revision in criminal proceedings under the provisions of s 323 of the CPC, 'but even wider powers conferred by s 35 of the Courts of Judicature Act 1964... '.

[11] In exercising its extensive revision powers as set out in *Manokaran* , the Supreme Court in *Liaw Kwai Wah v Public Prosecutor* [1987] 2 MLJ 69; [1987] CLJ Rep 163 held that the main objective of the High Court is essentially to put right a miscarriage of justice. The Supreme Court in *Liaw Kwai Wah* cited with approval the leading Indian cases on this subject, *Emperor v Nasrullah & Ors* [1928] AIR All 287(Ind) and *Ramanathan Chettiyar v Subrahmanya Ayyar* ILR 47 Mad 722, and held as follows:

> Object of revision
>
> We would observe that the power of revision is to be exercised in accordance with the law for the time being in force relating to criminal procedure. In the present case that law is the Criminal Procedure Code. We would also observe that the object of

the revisionary powers provided for in the Code is— A

> ... to confer upon criminal courts a kind of paternal or supervisory jurisdiction, in order to correct miscarriage of justice arising from misconception of law, irregularity of procedure, neglect of proper precautions or apparent harshness of treatment, which has resulted on the one hand in some injury to the due maintenance of law and order, or on the other hand, in some undeserved hardship to individuals. (Emperor v Nasrullah & Others [1928] AIR All 287). B

It is also clear that the High Court may examine the record of proceedings in the subordinate courts 'wherever it considers that in doing so the purpose of justice will be served, as for example, accused is subjected to a vexatious and groundless prosecution.' (Ramanathan Chettiyar v Subrahmanya Ayyar ILR 47 Mad 722). C

Duty of High Court

Basically, the duty lies with the High Court to see that the criminal law is properly administered by an inferior court.

The Judge's duty is to satisfy himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed and as to the regularity of any proceedings of such inferior court. Where, for instance, a convicted person has scrupulous objection to invoke the jurisdiction of a High Court, either on a question of legality of conviction or error of law concerning the conviction or sentence, the Judge ought to call for and examine the record with a view to exercising the revisionary power to correct a miscarriage of justice. D E

[12] The Federal Court in *Tan Sri Eric Chia Eng Hock v Public Prosecutor (No 1)* [2007] 2 MLJ 101; [2007] 1 CLJ 565 had reaffirmed and set out unequivocally the purpose of a revision and the powers and duties of a judge exercising a revisionary power as below: F

> [32] It has been said that a 'revision is not a right and is only a procedural facility afforded to a party, while an appeal is a statutory right conferred on a party. It cannot be said that a proceeding in revision is a continuation of the suit, appeal or trial. It is only a step-in-aid for invoking the powers of superintendence by the sessions judge and the High Court for correcting irregularities if any, in the judgments and orders of the subordinate courts. Interference in revision being a discretionary power vested in the superior courts, a revision petition cannot be considered to be a continuation of the proceedings pending in the trial court or the appellate court' (see *Kunhammad v Abdul Kader* [1977] KLT 840). Similarly, in *Ku Izham bin Ku Adnan v Public Prosecutor* [1998] 5 MLJ 720; [1998] 2 CLJ 956 it was said that the 'object of a revision is to confer upon criminal courts a kind of paternal or supervisory jurisdiction, in order to correct miscarriage of justice arising from misconception of law, irregularity of procedure, neglect of proper precautions or apparent harshness of treatment, which has resulted in some injury to the due maintenance of law and order or in some undeserved hardship to individuals. The judge's duty is to satisfy himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed and as to the regularity of any proceedings of such inferior court. G H I

[13] Relying on the relevant provisions under Chap XXXI of the CPC and ss 31 and 35–37 of the Courts of Judicature Act 1964, and the legal principle pertaining to revision as set out by the authorities cited earlier, I am entitled at this juncture to examine the charges preferred against the accused with the intent of satisfying myself as to the regularity of the proceedings before the SCJ. This is also in line with my duty at this stage exercising my 'supervisory jurisdiction, in order to correct miscarriage of justice arising from misconception of law, irregularity of procedure, neglect of proper precautions or apparent harshness of treatment', which may have resulted in some injury to the due maintenance of law and order or in some undeserved hardship to the accused (see *Tan Sri Eric Chia Eng Hock*).

[14] The charges for cases 2, 3 and 4 were for offences under para 68(2)(c) of Act 716 . The said sub-s 68(2) was drafted with a certain peculiarity. It started with the phrase 'Any person who commits an offence under sub-s (1) ... '. At one look, that phrase may be read to mean that sub-s 68(2) is an enhanced penalty provision, akin to ss 39A and 39C of the Dangerous Drugs Act 1952 ('the DDA'). If that reading is correct, the charges for cases 2, 3 and 4 against the accused must reflect that he is charged for offences under sub-s 68(1) and to be sentenced under sub-s 68(2) . And if this court agrees with that reading, then I must make specific orders on this issue.

[15] However, upon scrutiny, I am satisfied that the said sub-s 68(2) is not an enhanced penalty provision. If it is so, it would have used similar language with that found, for instance, in s 39A of the DDA, which provides:

> Every person *found guilty* under subsection (1) ... . (Emphasis added.)

[16] It is my finding that the phrase 'Any person who commits an offence under sub-s (1)' in sub-s 68(2) is almost akin in its effect and intent to s 313 of the Penal Code, which provides:

> Whoever commits the offence defined in s 312 ...

which has the legal effect of it being a criminalisation provision. A person, therefore can be charged for an offence under sub-s 68(2) and to be sentenced under the same provision.

[17] I therefore found that the charges against the accused were lawful.

[18] As para 68(2)(c) of the said Act provides mandatorily that both the sentence of fine and imprisonment, within the range as stated therein, shall be imposed upon conviction, the sentence of imprisonment only that was meted out by the learned SCJ to the accused for all the charges for cases 2, 3 and 4 were clearly a mistake that is subject to a revision by this court pursuant to s 323.

[19] Applying again the relevant provisions under Chapter XXXI of the CPC and ss 31 and 35–37 of the Courts of Judicature Act 1964 and the legal principle pertaining to revision as set out by the authorities cited earlier, and having satisfied that the SCJ had erred in law in not making order for the sentence of fines against the accused for the charges for cases 2, 3 and 4, it is my finding that I am empowered to alter the nature of the said sentences accordingly.

THE REVISED SENTENCE

[20] The learned deputy further highlighted to this court that Panthera Tigris (Tiger) for which the accused was charged for case 2 is listed as 'critically endangered' under the International Union for Conservation of Nature ('IUCN') Red List of Threatened Species.

[21] Whereas, Nebulosa (Clouded Leopard) and Panthera Pardus (Leopard), the subjects of the charges against the accused for cases 3 and 4 respectively, are listed as 'vulnerable' in the said IUCN Red List of Threatened Species.

[22] Based on the above facts, the learned deputy had submitted that this court shall impose the appropriate fines against the accused and not alter the duration of the 24-month imprisonment that had been sentenced against the accused by the SCJ. Apart from highlighting the gravity of the offences committed by the accused, the learned deputy also informed the court that the accused would complete serving the said 24-month period on 26 April 2019, a day after the hearing date of this revision by this court.

[23] The learned counsel for the accused in his submission stated that he conceded that the learned SCJ had erred in not imposing the mandatory sentence of fines against the accused. The learned counsel had asked that this court took into consideration the fact that the trial for the charges against the accused had, in actual fact, continued for two years. The accused was originally facing three charges only. The accused was discharged not amounting to an acquittal in respect of those three charges at the request of the prosecution on 5 March 2018, but was subsequently re-charged for the charges as reflected in cases 1–4 on that same date.

[24] I had expressed briefly at the proceedings before I read out my decision that this court agrees with the submission of the learned deputy that the offences committed by the accused are serious in nature. In fact, this court also took judicial notice on the seriousness of the offences committed by the accused as s 68 of Act 716 is listed in the Second Schedule to the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities

A Act 2001 (Act 613) and therefore falls within the definition of 'serious offence' under that Act.

[25] However, notwithstanding the offences under s 68 of Act 716 is legally defined as 'serious offence', this court took the view that the sentences provided B for persons found guilty for offences under para 68(2)(c) of Act 716 does not reflect the gravity of the offence. Until the said provision is reviewed and sentences provided therein are amended accordingly, this court is bound to only impose sentences as currently provided and taking into consideration the applicable principle on sentencing. The learned deputy informed the court that C Act 716 is undergoing review process which include proposal to increase the punishment as provided under s 68(2)(c).

[26] My research showed that there are very few cases pertaining to Act 716 being reported in law journals. One that I had referred to for purposes of my D decision in this review was the decision of my learned brother Collin Lawrence Sequerah JC (as His Lordship then was) in *Public Prosecutor v Nguyen Thi Huong* [2014] MLJU 1917; [2015] 2 CLJ 102. There, His Lordship was dealing with an appeal against the inadequacy of sentences for four charges against the respondent under ss 60(1)(b), 65, 68(1)(b) and 71 of Act 716. The E sessions judge in that case sentenced the respondent as follows:

(a) six months imprisonment for the s 60(1)(b) offence;

(b) three months and RM20,000 (s 65);

F (c) nine months (s 68(1)(b)); and

(d) nine months and RM30,000 (s 71).

His Lordship allowed the prosecution's appeal and enhanced the sentences to the following:

G (a) 12 months imprisonment for the s 60(1)(b) offence;

(b) six months and RM40,000 (s 65);

(c) 18 months (s 68(1)(b)); and

H (d) 18 months and RM50,000 (s 71).

[27] I had particularly applied His Lordship's reference to the Parliamentary debate as shown in the Hansard during the tabling of Act 716 to replace its predecessor, the Protection Of Wild Life Act 1972 (Act 76), as a reflection of I public interest in the preservation of wildlife in Malaysia. His Lordship held as follows:

> [10] It is therefore clear that one of the foremost considerations in sentencing policy is that of public interest. ... I do not think that there can be much argument that it would be in the public interest to ensure the protection of certain species of wildlife.

It is also in keeping with the overall concept of public interest that such rights of liabilities as are affected can be gleaned from a particular Act that has been amended in order to reflect the intended public interest. In the instant case that Act is the Wildlife Conservation Act 2010 ('Act 716'). This Act replaced the Wildlife Preservation Act 1972 ('Act 76'). One of the main aims in replacing Act 76 with Act 716 was because the punishment for offences under Act 76 prescribed disproportionately lower sentences for offences committed.

[11] The policy reasons behind the amendment to the said Act can be gathered from the reference to the official Parliamentary debates or the Penyata Rasmi Parlimen Dewan Rakyat (Hansard) dated 12 July 2010 Second and Third Reading where the then Right Honourable Minister for Natural Resources and Environment, YB Dato' Douglas Uggah Embas said in Bahasa Malaysia:

> ... di antara kelemahan akta yang sedia ada adalah denda yang terlalu rendah untuk membanteras jenayah berkaitan hidupan liar. ... Ia didapati tidak setimpal dengan nilai komersial dan estetik hidupan liar yang dilindungi di bawah akta tersebut. Sebagai contoh, penalty maksimum bagi kesalahan membunuh seekor harimau liar di bawah akta sedia ada adalah RM15,000 atau penjara tidak melebihi lima tahun sahaja kalau dibandingkan dengan nilai komersial yang boleh menjangkau RM200,000. Di bawah rang undang-undang ini, kesalahan yang sama mengenakan denda minimum sebanyak RM100,000 dan maksimum RM500,000 dan penjara mandatori tidak melebihi lima tahun. Dalam mengambilkira keperluan pencegahan melalui penalti bersifat deterrent dengan izin, rang undang-undang ini telah memasukkan elemen penjara mandatori bagi kesalahan demikian terutama bagi melindungi species hidupan liar yang sangat terancam. Hukuman dan denda yang dicadangkan dalam rang undang-undang ini menunjukkan komitment kerajaan yang tinggi dalam menangani aktiviti jenayah hidupan liar ke arah membaiki imej negatif negara yang dilabel sebagai hab kepada penyeludupan perdagangan haram hidupan liar antarabangsa.

...

[14] The court will therefore be failing in its duty, if a strong message was not sent out that such crimes would not merely result in a 'slap on the wrist' but with severe punishment in keeping with the aims and objectives of Parliamentary intention in amending such Act. A mode of sentence that would result in a deterrence to would be offenders was therefore justified under the circumstances.

[28] Taking into consideration all pertinent facts and information available, including the listing in the IUCN Red List of the animals which were the subject of the charges against the accused, the need for this court to send a strong message to the public on the seriousness of the commission of such in keeping with the aims and objectives of Parliamentary intention in introducing Act 716 in 2010, this court, in exercising its revisionary powers against the decision of the SCJ, had decided as follows:

(a) case 2: for the three charges relating to the critically endangered Panthera Tigris, to impose fines of RM150,000 for each offence, in default three months jail;

(b) case 3: for the three charges relating to the vulnerable Neofelis Nebulosa, to impose fines of RM100,000 for each offence, in default two months jail;

(c) case 4: for the one charge relating to the vulnerable Panthera Pardus, to impose fines of RM100,000 for the offence, in default two months jail; and

(d) the sentence of 24 months imprisonment for each of the charges for cases 2, 3 and 4, and for all the said sentences to run concurrently, as imposed by the SCJ is affirmed.

Order accordingly

Reported by Ashok Kumar